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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of )  
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Cellular Service and Other Commercial )  
Mobile Radio Services in the Gulf of )  
Mexico )  
)  
Amendment of Part 22 of the Commission's )  
Rules to Provide for Filing and Processing )  
of Applications for Unserved Areas in the )  
Cellular Service and to Modify Other )  
Cellular Rules )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

PR Docket No. 97-112

CC Docket No. 90-6


To: The Commission

COMMENTS OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC.

By:

  
Jill Lyon, Director of Regulatory Relations  
1150 18th Street, N.W., Suite 250  
Washington, D.C. 20036  
(202) 331-7773

Of Counsel:

Elizabeth R. Sachs, Esq.  
Lukas, McGowan, Nace & Gutierrez, Chartered  
1111 19th Street, N.W., Suite 1200  
Washington, D.C. 20036  
(202) 857-3500

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The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its comments in the above-entitled proceeding.<sup>1</sup> AMTA recommends that the FCC not adopt geographic licensing provisions for Gulf of Mexico SMR systems comparable to those proposed for the cellular service. As detailed herein, the substantively different regulatory histories of these services dictate against adopting equivalent provisions in this aspect of their licensing schemes.

## **I. INTRODUCTION**

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country. Many have acquired, or are likely to acquire, geographic authorizations as the Commission continues its migration from the site-by-site licensing approach that characterized these services in the past. Other members presumably will retain their site-specific licenses, along with whatever rights are accorded them as incumbents. Thus, the Association and its members have a substantial interest in the outcome of this proceeding.

## **II. BACKGROUND**

2. In the Notice, the Commission has reexamined and, in a number of substantive ways, revised its rules governing the provision of cellular service in the Gulf of Mexico Service Area ("GMSA"), a matter that has been the subject of ongoing controversy for almost fifteen

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<sup>1</sup> Second Further Notice of Proposed Rule Making, WT Docket No. 97-112, FCC 97-110, 12 FCC Rcd \_\_\_\_ (rel. Apr. 16, 1997) ("Notice" or "NPR").

years. The FCC adopted rules providing for the licensing of cellular operations in the Gulf shortly after finalizing its initial rules governing land-based cellular systems. Parties were authorized to provide service in that area while the Commission was still processing applications for the initial Metropolitan Statistical Area ("MSA") cellular authorizations. The GMSA cellular systems were operational before the subsequent Rural Service Area ("RSA") cellular licenses were issued, and even before the applications for them were accepted. Thus, in the cellular service, interested parties knew virtually from its inception that the Gulf of Mexico was considered a distinct, discrete geographic area within which specific entities were authorized to provide service. Nonetheless, disputes regarding from where and by whom cellular subscribers in the Gulf may be served have embroiled the FCC and a number of affected parties in numerous rule making proceedings and related litigation almost from the outset.

3. The solution proposed in the Notice would divide the previously-defined GMSA into two service areas. The Coastal Zone would comprise that portion of the GMSA extending from the coastline of the Gulf of Mexico to the 12-mile offshore limit. Within that area, the FCC has proposed to apply its existing cellular rules governing unserved areas, including provisions that would permit the agency to select among mutually exclusive applicants for sites within the Coastal Zone through competitive bidding. The Exclusive Zone would extend from the 12-mile limit to the southern limits of the GMSA. The two cellular carriers already authorized to provide service in the GMSA would be permitted to move transmitters and modify or expand their service areas within the Exclusive Zone without the prospect of competing applications.<sup>2</sup>

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<sup>2</sup> Notice at ¶ 3.

4. AMTA certainly supports the FCC's desire finally to resolve these matters, and to do so in a fashion that will reduce the likelihood of conflict between the water-based and land-based cellular operators involved and that is likely to promote the best quality of service to the public in the affected areas. The regulatory scheme outlined in the Notice may accomplish both of those objectives, and also recognizes the investments made already by operators that have been permitted to serve that marketplace under current FCC rules.

5. However, in conjunction with its proposal to establish service rules governing the inter-relationship of licensed cellular operators in the GMSA and those in adjacent markets surrounding the Gulf, the Commission also has requested comment on whether it should extend its geographic area licensing of 800 MHz and 900 MHz SMR to the Gulf of Mexico.<sup>3</sup> Assuming that geographic licensing is appropriate, the Notice further asks how Gulf service areas should be defined, and whether the two-zone approach proposed for the cellular service should be applicable also in the SMR service.<sup>4</sup>

6. AMTA considers this Commission initiative misguided. The regulatory history of the SMR service does not support a belated effort to carve out the provision of service to users in the Gulf of Mexico from that provided by adjacent land-based systems. Moreover, there is no evidence that a failure to do so will in any way adversely affect the quality of service available to prospective users.

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<sup>3</sup> Id. at ¶ 62.

<sup>4</sup> Id.

### **III. THE FCC SHOULD NOT RETROACTIVELY CREATE A DISTINCT GULF OF MEXICO GEOGRAPHIC AREA FOR THE LICENSING OF 900 MHz SMR SERVICE.**

7. As stated in the Notice, the FCC recently modified its rules governing 900 MHz SMR licensing and adopted a geographic, as opposed to site-specific, approach.<sup>5</sup> Those rules divided the allocated spectrum into twenty 10-channel blocks in each of 51 Major Trading Areas ("MTAs").<sup>6</sup> It further provided that the licenses for each would be awarded through competitive bidding.<sup>7</sup> Those 51 MTAs do not include a geographic area comparable to the cellular service's GMSA, and, in fact, make no reference to the provision of service in the Gulf or any other body of water.

8. In April, 1996, the FCC completed the 900 MHz SMR auction in which a total net revenue of more than \$200 million was raised for the Federal Treasury.<sup>8</sup> Licenses for the majority of these systems were awarded during the summer and fall of 1996. Winning bidders that did not qualify for small business status were obligated to pay the full bid amount shortly after completion of the auction; qualified small businesses winners have made their down payments and required quarterly payments since then.

9. Because 900 MHz SMR geographic licenses were only available through an auction process, aspiring licensees were required to calculate what they believed to be the value of the authorizations. They did so, of course, based on the FCC's own rules which, unlike those

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<sup>5</sup> Id. at ¶ 61.

<sup>6</sup> 47 C.F.R. §§ 90.661, 90.617.

<sup>7</sup> 47 C.F.R. §§ 90.661, 90.801.

<sup>8</sup> Public Notice, FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas, DA 96-586 (rel. April 15, 1996).

in the cellular service, did not indicate that the Commission intended to license additional systems on these same frequencies in the Gulf of Mexico. Rather, the rules provided that an MTA licensee would be permitted to operate from any location within the MTA at maximum permissible antenna height and power<sup>9</sup> as long as: (i) it protected the operations of qualified incumbents, (ii) it complied with any rules or international agreements restricting use of the frequencies, and (iii) it limited its field strength at the border of its MTA service area in accordance with specified rules, unless all bordering MTA licensees agreed to a higher field strength.<sup>10</sup>

10. Since no international agreement limited the provision of service into the Gulf from land-based transmitters, and because there were no adjacent MTA licenses to be awarded in the Gulf, successful bidders in MTAs bordering the Gulf of Mexico assumed that they would be able to serve the coastal community proximate to their targeted MTA and factored that assessment into their bidding strategy. These 900 MHz MTA licensees have paid already for the right to offer service to customers in the Gulf of Mexico<sup>11</sup>, with the proviso that they provide protection to the operations of any protected, incumbent co-channel licensees with facilities in the Gulf. The creation of a new, GMSA-equivalent service area would

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<sup>9</sup> The FCC has recognized already that radio propagation over water is typically greater than that experienced on land. See, e.g., Third Report and Order and Memorandum Opinion and Order on Reconsideration, CC Docket No. 90-6, 7 FCC Rcd at 7184 (1992). That problem would be exacerbated in the context of co-channel land-based versus water-based SMR systems which, because of their traditional single-site, dispatch-oriented system design, are permitted substantially greater antenna heights and effective radiated power levels than are cellular systems.

<sup>10</sup> 47 C.F.R. §§ 90.663(a) and 90.671.

<sup>11</sup> By contrast, cellular MSA and RSA licensees acquired their authorizations through comparative hearing or lottery.

fundamentally alter the premise on which their 900 MHz MTA bids were tendered. It would deprive them of some portion of the "asset" they acquired, and for which they already have fully paid in many instances, and force them to bid for it again in a subsequent auction. AMTA is confident that, upon reflection, the FCC will agree that such an approach would be entirely inequitable, and would undermine the FCC's efforts to ensure that the competitive bidding process is sufficiently rational and reliable to attract qualified participants.

**IV. THE FCC SHOULD NOT CREATE A DISTINCT GULF OF MEXICO GEOGRAPHIC AREA FOR THE LICENSING OF 800 MHz SMR SERVICE.**

11. The Notice also questions whether it should extend geographic area licensing of 800 MHz SMR systems to the Gulf of Mexico.<sup>12</sup> It notes that the FCC has adopted rules governing the so-called "upper 200" 800 MHz SMR channels pursuant to which licenses for United States Department of Commerce Bureau of Economic Analysis Economic Areas ("EAs") will be awarded through comparative bidding.<sup>13</sup> It further notes that similar rules have been proposed for the remaining 800 MHz SMR frequencies, which rules subsequently were adopted on June 23, 1997.<sup>14</sup>

12. AMTA urges the FCC not to adopt a GMSA-equivalent concept for the 800 MHz SMR service either. As both the Commission and the Association are all too aware, resolution of the issues relating to geographic licensing of 800 MHz SMR spectrum has been both protracted and controversial. The industry has been frozen for almost three years while the FCC

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<sup>12</sup> Id. at ¶ 62.

<sup>13</sup> Id. at ¶ 61.

<sup>14</sup> News Release, "FCC Amends 800 MHz Specialized Mobile Radio Rules to Facilitate Auctions and the Rapid Deployment of Services to the Public", Report WT 97-26 (rel. June 23, 1997).

has considered how to overlay a geographic licensing approach on this very heavily encumbered spectrum.<sup>15</sup> What is fervently hoped to be the penultimate order in this proceeding was finally adopted last week. Those decisions will, at last, allow the FCC and the SMR community to proceed expeditiously to renewed licensing in this service. That progress inevitably will be slowed to some extent if a question remains open as to the geographic rights of successful bidders in EAs bordering on the Gulf of Mexico.

13. There is no evidence that subscribers to 800 MHz SMR service in the Gulf of Mexico are currently, or will be in the future, underserved either in terms of availability or quality of offerings. Injection of this issue into the already much-delayed 800 MHz proceeding would not serve the interests of the public or of the SMR industry. Therefore, AMTA recommends that the FCC not extend its 800 MHz SMR geographic licensing approach to the Gulf of Mexico.

## **V. CONCLUSION**

14. For the reasons described, AMTA urges the Commission to adopt rules consistent with the concerns detailed above.

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<sup>15</sup> The number of incumbent systems already operating in this band, in conjunction with the need to accommodate the acknowledged propagation characteristics of radio signals over water, certainly would minimize, or even eliminate, any probability that the creation of a Gulf of Mexico EA would produce a revenue benefit for the Federal Treasury.



## CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this July 2, 1997, caused to be hand-carried a copy of the foregoing Comments to the following:

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, D.C. 20554

Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

Dan Phythyon, Acting Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20554

Rosalind K. Allen, Deputy Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20554

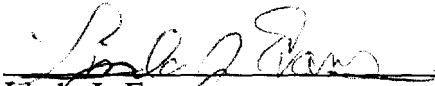
Karen Gulick, Associate Bureau Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20554

David Furth, Chief  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2100 M Street, N.W., 7th Floor, Room 24  
Washington, D.C. 20554

Sandra Danner, Deputy Chief  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2100 M Street, N.W., 7th Floor  
Washington, D.C. 20554

Ramona Melson, Chief  
Policies and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2100 M Street, N.W., 7th Floor  
Washington, D.C. 20554

International Transcription Services, Inc.  
2100 M Street, N.W., Ste. 140  
Washington, D.C. 20037

  
Linda J. Evans